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<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/925,825
	Filing Date	August 10, 2001
	First Named Inventor	Clarence J. Link, Jr
	Art Unit	3751
	Examiner Name	Steven O. Douglas
Total Number of Pages in This Submission	Attorney Docket Number	

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ENCLOSURES (Check all that apply)		
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<input type="checkbox"/> Response to Missing Parts/Incomplete Application		
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual	Neal R. Kennedy
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Date	April 24, 2003

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# FEE TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 160.00

## Complete if Known

Application Number 09/925,825  
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First Named Inventor Clarence J. Link, Jr.  
Examiner Name Steven O. Douglas  
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## METHOD OF PAYMENT (check all that apply)

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☐ Deposit Account: (charge any deficiency in enclosed fees)

Deposit Account Number  
Deposit Account Name

500449

McAfee & Taft

The Commissioner is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments

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☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	750	2001	375	Utility filing fee	
1002	330	2002	165	Design filing fee	
1003	520	2003	260	Plant filing fee	
1004	750	2004	375	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					(\$)

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

		Extra Claims		Fee from below		Fee Paid
Total Claims	<input type="text"/>	-20** =	<input type="text"/>	X	<input type="text"/>	<input type="text"/>
Independent Claims	<input type="text"/>	-3** =	<input type="text"/>	X	<input type="text"/>	<input type="text"/>
Multiple Dependent	<input type="text"/>				<input type="text"/>	<input type="text"/>

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	84	2201	42	Independent claims in excess of 3	
1203	280	2203	140	Multiple dependent claim, if not paid	
1204	84	2204	42	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	
SUBTOTAL (2)					(\$)

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	410	2252	205	Extension for reply within second month	
1253	930	2253	465	Extension for reply within third month	
1254	1,450	2254	725	Extension for reply within fourth month	
1255	1,970	2255	985	Extension for reply within fifth month	
1401	320	2401	160	Notice of Appeal	
1402	320	2402	160	Filing a brief in support of an appeal	160.00
1403	280	2403	140	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,300	2453	650	Petition to revive - unintentional	
1501	1,300	2501	650	Utility issue fee (or reissue)	
1502	470	2502	235	Design issue fee	
1503	630	2503	315	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	750	2809	375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	750	2810	375	For each additional invention to be examined (37 CFR 1.129(b))	
1801	750	2801	375	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 160.00

## SUBMITTED BY

(Complete if applicable)

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Registration No. (Attorney/Agent) 31,383  
Telephone 405 235-9621  
Signature  
Date April 24, 2003

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

*S. Ruttle*  
*5/5/03*

*#8/Brief*

Applicant: Clarence J. Link, Jr. )  
Serial No.: 09/925,825 ) Group Art Unit: 3751  
Filed: August 10, 2001 ) Examiner: Steven O. Douglas  
For: LIQUID DELIVERY )  
VEHICLE WITH REMOTE )  
CONTROL SYSTEM )

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MAY 02 2003

TECHNOLOGY CENTER R3700

**APPELLANT'S BRIEF**

Commissioner for Patents  
Washington, D. C. 20231

SIR:

This brief is submitted subsequent to the Notice of Appeal filed February 24,  
2003.

**I. REAL PARTY IN INTEREST**

Clarence J. Link, Jr., Appellant.

**II. RELATED APPEALS AND INTERFERENCES**

None.

**III. STATUS OF CLAIMS**

Claims 1-47 have been allowed and are not a part of this appeal.

Claims 48-86 have been rejected, and all of these claims are appealed.

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#### **IV. STATUS OF AMENDMENTS**

No amendment has been filed subsequent to the final rejection.

#### **V. SUMMARY OF INVENTION**

Liquid delivery vehicle with remote control system of the present invention is illustrated is a "bobtail" truck having a rolling chassis 12, front wheels 14 and rear drive wheels 16 with a cab 18 which are normally purchased items.

Liquid is carried on vehicle 10 in a delivery tank 20 mounted on chassis 12. Other components include a hose reel 22 with a delivery hose 24 and a meter 26 which measures and records the amount of liquid pumped out of delivery tank 20 during a delivery cycle.

Control system 30 for delivery vehicle 10 comprises a remote control panel 32, a main control panel 34 and an annunciator panel 36.

The drive train of vehicle 10, of course, includes an engine 40 and a transmission 42. If transmission 42 is a manual transmission, it includes a clutch 44. Engine 40 has a throttle 46 which controls the flow of fuel to the engine.

Attached to transmission 42 is a power take-off 48 which, when engaged, transmits power from engine 40 to a power take-off shaft 50, again in a known manner.

An internal flow valve 52 is mounted on the lower side of delivery tank 20 and is attached to a flange 58 which is integral with the delivery tank.

A pump 60 is attached to internal flow valve 52 by an inlet flange 62 which is in communication with the internal flow valve. Pump 60 also has an outlet 64.

Internal flow valve 52 is adapted to be opened in response to pressure applied thereto. Also, internal flow valve 52 acts as an excess flow valve which will close automatically in the event of an accident which may shear pump 60 away from vehicle 10.

A drive shaft 72 extends between power take-off shaft 50 and a pump shaft 70 and is connected thereto by universal joints 74 and 76, respectively. Thus, when power take-off shaft 50 is rotated by the engagement of power take-off 48, pump shaft 70 is rotated so liquid may be pumped out of delivery tank 20 through internal flow valve 52.

Main control panel 34 is electrically connected to vehicle battery 78 by a pressure switch 80 and ignition switch 82. When the parking brake on vehicle 10 is set or activated, and when ignition switch 82 of vehicle 10 is closed, pressure switch 80 is closed so that power is supplied to main control panel 34 of control system 30.

Main control panel 34 is adapted for connection to an electrical line 90 and a plurality of pneumatic lines 86, 88, 92, 94 and 96. Electric line 90 is connected to a throttle controller 98 which is connected to throttle 46 on engine 40. Pneumatic line 92 is connected to a pneumatic clutch or transmission controller 100 which is connected to clutch 44. Pneumatic line 94 is connected to a pneumatic power take-off controller 102 which in turn is connected to power take-off 48. Pneumatic line 96 is connected to a pneumatic internal flow valve controller 104 which is connected to internal flow valve 52.

Disposed inside main control panel 34 are a clutch solenoid 105, a power take-off solenoid 106 and an internal flow valve solenoid 107. Clutch solenoid 105 is disposed in pneumatic line 92 and controls the supply of air to clutch controller 100. Power take-off solenoid 106 is disposed in pneumatic line 94 and controls the supply of air to power take-off controller 102. Valve solenoid 107 is disposed in pneumatic line 96 and controls the supply of air to valve controller 104. When any of solenoids 105, 106 or 107 is actuated, air is communicated to the corresponding controller, and when deactuated, air in the corresponding pneumatic line is vented through vent line 88.

A first clutch pressure switch 108 and a second clutch pressure switch 109 are in communication with pneumatic line 92 and are adapted for sensing pressure in pneumatic line 92. Second clutch pressure switch 109 is connected to a hose reel control panel 156.

Pneumatic line 86 connects main control panel 34 to an air source 110.

A manual emergency shutdown 114 is provided so that the air supply to main control panel 34 may be shut off quickly and vented out of a vent line 115. This will result in clutch controller 100, power take-off controller 102 and valve controller 104 being substantially simultaneously disconnected from air supply 110.

Pneumatic or vent line 88 vents to the atmosphere.

Mounted on remote control panel 32 are a throttle switch 120 connected to throttle controller 98, a power take-off switch 122 connected to power take-off solenoid 106, an internal flow valve switch 124 connected to internal flow valve solenoid 107 and a clutch switch 126 connected to clutch solenoid 105.

Actuation of throttle switch 120 selectively sends a throttle opening and closing signal to throttle controller 98. Actuation of power take-off switch 122 selectively sends a power take-off engaging or disengaging signal to power take-off controller 102. Actuation of internal flow valve switch 124 selectively sends a valve opening or closing signal to valve controller 104. Actuation of clutch switch 126 selectively sends a clutch engaging or disengaging signal to clutch controller 100.

Actuation of throttle switch 120 allows manual actuation of throttle controller 98, actuation of power take-off switch 122 allows manual actuation of power take-off controller 102, internal flow valve switch 124 allows manual control of internal flow valve controller 104, and clutch switch 126 allows manual control of clutch controller 100. Thus, an

operator can the corresponding switches 120, 122, 124 and 126 to open and close throttle 46, engage and disengage clutch 44, engage and disengage power take-off 48 and open and close internal flow valve 52.

Discharge 64 of pump 60 is connected to meter 26 by a pump discharge line 148. Meter 26 is in communication with hose 24 on hose reel 22 through another liquid line 150.

Hose reel 22 may be a powered hose reel driven by an electric hose reel motor 152.

A reel rewind controller 162 and is adapted to actuate hose reel control panel 156 and thus reel motor 152 by depressing a manual rewind button 166. Reel rewind controller 162 includes an emergency stop switch 167.

A hand-held remote controller 170 has a radio transmitter (not shown) which sends signals through an antenna 172 to antenna 146 on vehicle 10. Remote controller 170 has a remote clutch button 174, a remote throttle button 176, and a remote emergency shutdown button 178.

If delivery vehicle 10 has a powered hose reel 22 driven by reel motor 152, remote controller 170 may also have a remote reel button 180. When throttle controller 98 is actuated to a throttle opening position, hose reel control panel 156 signals hose reel motor 152 to be in condition for rotating in an unwinding direction. Manual rewind button 166 is inactive when throttle controller 98 is thus engaged, and actuation of reel motor 152 may only occur in this case when remote reel button 180 on remote controller 170 is pushed. When throttle controller 98 is not so engaged, and reel motor 152 is in a rewind condition, depressing remote reel button 180 on remote controller 170 will cause reel motor 152 to rotate in the rewind direction. Releasing remote reel button 180 will cause reel motor 152 to stop.

If delivery vehicle 10 has an automatic transmission, power take-off 48 is part of the transmission and is known as a "hot shift" power take-off. "Hot shift" power take-off 48 and the automatic transmission have internal clutches (not shown) which engage and disengage the power take-off. In this automatic transmission configuration, there is no pneumatic power take-off controller 102. Instead, clutch controller 100 is an automatic transmission controller characterized by a solenoid which supplies hydraulic fluid to the internal clutches when the solenoid is engaged. Thus, in operation, the engagement of "hot shift" power take-off 48 on the automatic transmission is controlled by activating either clutch switch 126 on remote control panel 32 or remote clutch button 174 on remote controller 170. Power take-off switch 122 on remote control panel 32 is deactivated.

In operation, the operator actuates clutch switch 126 on remote control panel 32 which sends a clutch disengaging signal to clutch controller 100 to disengage clutch 44. Next, the operator actuates internal flow valve switch 124 which sends a valve opening signal to valve controller 104 to open internal flow valve 52, thereby communicating liquid from delivery tank 20 with pump 60. The operator then actuates power take-off switch 122 which sends a power take-off engaging signal to power take-off controller 102 to engage power take-off 48 so that power may be applied to pump 60 when clutch 44 is re-engaged.

At this point, the operator can extend hose 24. Then, the operator may push and hold remote reel button 180 on remote controller 170 to send a reel unwinding signal to hose reel controller 156 and reel motor 152, thereby causing the reel motor to rotate so that hose 24 is unwound from reel 22.



When unwinding is completed, the operator may press remote throttle button 176 again to send the throttle closing signal to throttle controller 98 which results in the engine being slowed back down to idle speed.

Hose valve 210 is engaged with connector 202 on storage tank 200 and valve 210 is opened. The operator engages remote clutch button 174 which sends a clutch engaging signal to clutch controller 100 to re-engage clutch 44 so that power is transmitted through power take-off 48 to pump 60. It should be noted that clutch 44 is thus re-engaged even though clutch switch 126 on remote control panel 32 is in the disengaging position thereof.

Liquid is pumped out of delivery tank 20 through internal flow valve 52 and discharged out of pump 60 through line 148, meter 26, line 150, hose 24 and hose valve 210 into storage tank 200. If desired, the operator may push remote throttle button 176 to send a throttle opening signal to throttle controller 98, thereby opening throttle 46 to increase the speed of engine 40.

When liquid level 206 reaches the desired amount, the operator pushes remote throttle button 176 to send a throttle closing signal to throttle controller 98, thereby slowing down engine 40 and pump 60, and also pushes remote clutch button 174 to send a clutch disengaging signal to clutch controller 100 to disengage clutch 44, thereby stopping power take-off 48 and pump 60.

At this point, the operator then closes and disconnects hose valve 210.

If reel 22 is powered by reel motor 152, the operator may once again push and hold remote reel button 180 on remote controller 170 to send a reel rewind signal to reel rewind controller 162 and reel motor 152 so that hose 24 is automatically rewound on reel 22.

Remote controller 170 also has remote shutdown button 178 therein which, when pushed, remotely shuts down control system 30 completely. When remote shutdown button 160 is pushed, an engine shutdown signal is sent to the ignition of engine 40 on vehicle 10 so that the engine is stopped, a valve closing signal is sent to internal flow valve controller 104 so that internal flow control valve 52 is closed, and a power take-off disengaging signal is sent to power take-off controller 102 so that power take-off 48 is disengaged. In this way, pump 60 is shut off, and no liquid may flow from delivery tank 20 because internal flow valve 52 is closed.

## **VI. ISSUE**

Whether the Examiner was correct in rejecting claims 48-86 under 35 U.S.C. §251 as an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based.

## **VII. GROUPING OF CLAIMS**

The appealed claims stand or fall together on the issue of recapture only. The appealed claims have yet to be substantively examined based on the prior art.

## **VIII. ARGUMENT**

All of claims 48-86 have been rejected by the examiner for a single reason. The examiner stated:

Claims 48-86 [are] rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue was based. ... A broadening aspect is present in the reissue which was not present in the

application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

\* \* \*

In regard to Applicant's argument that Examiner improperly rejected the claims under 35 U.S.C. 251, with respect to the application of the **RECAPTURE** [emphasis by the examiner] doctrine ... , Examiner disagrees with Applicant, in that since Applicant did not amend the claim language before Examiner issued the claims, (i.e. claims were issued on a first office action), that Recapture does not apply. Particularly, it was pointed out in the rejection that Applicant's failure to respond to Examiner's Reasons for Allowance in paper #3 of the parent application is evidence enough for surrendering the subject matter referred to therein. Accordingly, the rejection is deemed proper.

The examiner's reason for this rejection comes from the Manual of Patent Examining Procedure. This was confirmed in a telephone conversation between the examiner and the undersigned attorney after issuance of the final office action. In MPEP 1412.02, there is an example (C) which reads as follows:

The limitation A omitted in the reissue claims was present in the claims of the original application. The examiner's reasons for allowance in the original application stated that it was that limitation A which distinguished over a potential combination of references X and Y. *Applicant did not present on the record a counter statement or comment as to the examiner's reasons for allowance, and permitted the claims to issue. The omitted limitation is thus established as relating to subject matter previously surrendered.* [Emphasis added]

The present case is a reissue application, and appellant readily acknowledges that it is a broadening reissue as well. It is also true, as stated by the examiner, that in the parent case, no statement was filed in response to the examiner's Reasons for Allowance. However, it is respectfully submitted that, in light of the particular facts in the present

case, the above-referenced MPEP provision is overly broad and inflexible application of it here is contrary to other law from the Court of Appeals for the Federal Circuit.

The error on which the present reissue application is based is a failure by the undersigned attorney to appreciate the full scope of the invention. More specifically, the there was a misunderstanding between the attorney and the applicant as to what constituted prior art. As stated in the reissue declaration, a federal regulation (49 C.F.R. §171.5) was cited in the specification and information disclosure statement as prior art when actually it was not.

More specifically, the pertinent part of the regulation as published on October 1, 1987 provides:

(iii) If there is an unintentional release of lading to the environment during transfer, the internal self-closing stop valve shall be promptly activated, and the qualified person unloading the cargo tank motor vehicle shall promptly shut down all motive and auxiliary power equipment. Prompt activation of the internal self-closing stop valve may be accomplished through:

\* \* \*

(C) A fully operational remote-controlled system capable of stopping the transfer of lading by operation of a transmitter carried by a qualified person attending unloading of the cargo tank motor vehicle. Where the means for closure of the internal self-closing stop valve includes a remote-controlled system, the attendance requirements . . . are satisfied when a qualified person:

(1) Is carrying a radio transmitter that can activate the closure of the self-closing stop valve;

(2) Remains within the operating range of the transmitter;  
and

(3) Has an unobstructed view of the cargo tank motor vehicle at all times that the internal stop-valve is open.

This detailed reference to a radio transmitter for activating the closure of the self-closing stop valve was not published prior to the reduction to practice of the present invention. The actual prior art appears in a DOT Interim rule published February 19, 1997. This document was disclosed on the Information Disclosure Statement for this reissue application. In this interim rule, it is noted that:

NPGA [National Propane Gas Association] has suggested the development of a "deadman" or a remote valve actuation system, possibly using a lanyard. Automobiles are commonly equipped with remote transmitter devices that fit on key rings to unlock doors or open trunk lids from 50 feet away. If such a manually activated device were used to close internal self-closing stop valves, would it provide a level of safety equivalent to the requirement for a passive automatic shut-down system required by [another section of the rules].

It is clear that this interim rule only discusses the possibility of a some vaguely described remote transmitter without any attention paid to how this would work. In fact, the interim rule poses the question of whether it would work at all. Thus, it cannot be considered a prior disclosure of the invention claimed in new claims 48-86.

Because of the misunderstanding about what was prior art, the undersigned attorney drafted the claims to be as broad as it was believed the presumed prior art would allow, rather than as broad as they could have been. Clearly, the original patent was partly inoperative or invalid by reason of the applicant claiming less than he had a right to claim. All of the claims were allowed on the first office action, and the examiner included his Reasons for Allowance. Because the undersigned attorney had not yet learned of the error at that time, it was not believed that any comment or statement by the applicant was necessary so none was made. This is not a case where the applicant argued to overcome the prior art, and it also is not a case where applicant simply failed to respond. Rather, it is a case where there was an error which resulted in a belief that a

response was not necessary. As a result, the patent was subsequently issued with the claims as originally drafted and with no comment by applicant in the file history.

Some time after the patent was issued, the inventor, who is the current assignee of the patent, was discussing the scope of the patent with the undersigned attorney with regard to similar products that has subsequently come on the market. During those discussions, it became clear that the above-described misunderstanding about the scope of the prior art had unfortunately occurred and that the above-cited federal regulation had actually not been issued at the time of the invention or even at the time the original assignee had placed the product on the market. The interim rule had been published at that time, and it is only that which is prior art to the present case, not the final regulation. All of this resulted in an error that caused a failure by the undersigned attorney to appreciate the full scope of the invention.

Such errors in which the attorney fails to appreciate the full scope of the invention are correctable through reissue. *In re Wilder*, 736 F.2d 1516, 222 U.S.P.Q. 369 (Fed. Cir. 1984). The Court stated:

The error provision of 35 U.S.C. §251 *is to be liberally construed* to permit correction of defects. ... An attorney's failure to appreciate the full scope of the invention is *one of the most common sources of defects in patents*. The fact that the error could have been discovered at the time of prosecution with a more thorough patentability search or with improved communication between the inventors and the attorney does not, by itself, preclude a patent owner from correcting defects through reissue. In this case, the attorney's error was discovered after commercialization of the invention and issuance of the patent. An application for broader claims was filed within two years after the original patent issued. Under these circumstances, the attorney's explanation of his error in misunderstanding the scope of the invention is sufficient to satisfy the error requirement of 35 U.S.C. §251. [Emphasis added]

The facts in the present case are very similar. Here, there was a misunderstanding of the prior art and miscommunication between the inventor and the attorney. If there had not had this misunderstanding of the prior art and the invention, claims 48-86 would have been submitted with the original application. Certainly, had this error been discovered earlier, the undersigned attorney would have made appropriate comments in response to the examiner's Reasons for Allowance and/or would have filed a continuation application. Unfortunately, it was not discovered until after issuance of the patent, leaving a reissue as the only way to correct this and attempt to get all of the patent protection to which the inventor would otherwise be entitled.

In the present case, there was a genuine error, and an error for which the Court of Appeals for the Federal Circuit has indicated is correctable through reissue. However, it was this very error which also caused the attorney not to respond to the examiner's reasons for allowance, and thus fall within the scope of the MPEP example cited above, and which the examiner now uses to as basis for the rejection of the claims under the recapture doctrine. Briefly stated, the only way the applicant could have avoided the rejection in this reissue application is to have made a statement in the parent application that it was not believed necessary to make. This clearly puts the reissue applicant in the impossible situation of having to have made arguments long before it was even known that such arguments could and should have been made and to take steps to correct an error before the error was discovered. It is respectfully submitted to the honorable Board that this just cannot be the law.

Thus, appellant respectfully submits that a blind application of the rule of Example (C) in MPEP 1412.02 would result in a loss of a right to correct an error of a

kind that the CAFC has specifically said a patent owner can correct by filing a broadening reissue application. It is therefore appellant's position that the MPEP rule should not and does not apply to the facts in this case. If it did, it would make a reissue application meaningless where an attorney's error was a result of a misunderstanding of the scope of the invention, "one of the most common sources of defects in patents" according to the court in *In re Wilder*. In fact, *Wilder* specifically applies to errors related to misunderstanding the scope of the invention and prior art, and thus should be applicable to the present case.

In summary, it is acknowledged that MPEP 1412.02 states that failing to make a statement in response to a Reasons for Allowance paper triggers the recapture doctrine, but it is believed that inflexible application of this rule here would result in a negating a specific right that the appellant has to correct an error. This would essentially mean that this "most common" type of error is not correctable in spite of other law that says it is. This would be contrary to the language of 35 U.S.C. §251 and would be an injustice to the appellant.

Therefore, the broader claims of the reissue application are properly submitted within the scope of 35 U.S.C. §251, and the rejection based on improper recapture should be reversed and the claims further examined on the merits.

#### **IX. APPENDIX**

A copy of the claims involved in the appeal follows:

48. A control apparatus for use on a liquid delivery vehicle of the type having a liquid tank, a flow valve in communication with the liquid tank, a pump in communication



with the flow valve, a power take-off connected to the pump for providing power thereto, a delivery hose in communication with the pump, and a hose reel on which the hose may be wound for storage, said apparatus comprising:

a hose reel drive means for rotating the hose reel;

a reel motor connected to said hose reel drive means for actuation thereof in response to a signal; and

a remote control for sending said signal to said reel motor.

49. The apparatus of claim 48 wherein:

said signal is a hose unwinding signal; and

said reel motor is adapted for unwinding the hose from the hose reel in response to said hose unwinding signal; and

said remote control is adapted for sending said hose unwinding signal to said reel motor.

50. The apparatus of claim 49 wherein the delivery vehicle is also of the type having a clutch for selectively connecting the power take-off to an engine of the vehicle, said apparatus further comprising:

clutch control means mounted on the vehicle for engaging the clutch in response to a clutch engaging signal and disengaging the clutch in response to a clutch disengaging signal;

wherein, said reel motor will only rotate the reel when said clutch disengaging signal is sent to said clutch control means.

51. The apparatus of claim 50 wherein:

said remote control is adapted for selectively sending said clutch engaging and disengaging signals to said clutch control means.

52. The apparatus of claim 50 wherein:

said clutch control means comprises:

a clutch pneumatic controller connectable to an air source on the vehicle and responsive to said clutch engaging and disengaging signals; and

a clutch pressure switch in pneumatic communication with said clutch pneumatic controller and connected to said reel motor such that said reel motor will rotate only when said clutch pressure switch senses air pressure communicated to said clutch pneumatic controller.

53. The apparatus of claim 48 further comprising throttle control means for opening an engine throttle of the vehicle in response to a throttle opening signal enclosing the throttle in response to a throttle closing signal.

54. The apparatus of claim 53 wherein:

said reel motor will only rotate the reel in a winding direction when said throttle closing signal is sent to said throttle control means; and

said reel motor will only rotate the reel in an unwinding direction when said throttle opening signal is sent to said throttle control means.

55. The apparatus of claim 53 wherein said remote control means is adapted for transmitting said throttle opening and closing signals.

56. The apparatus of claim 53 wherein:

said throttle control means comprises:

a throttle controller; and

a throttle switch having a throttle opening and closing position.

57. The apparatus of claim 56 wherein:

said remote control is adapted for transmitting said throttle opening and closing signals to said throttle controller when said throttle switch is in said throttle closing position.

58. The apparatus of claim 48 wherein said remote control is wireless.

59. The apparatus of claim 48 further comprising an emergency shutdown for closing the flow valve and shutting off power to the pump and said hose reel drive means.

60. A control apparatus for use on a liquid delivery vehicle of the type having a liquid tank, a flow valve in communication with the liquid tank, a pump in communication with the flow valve, said apparatus comprising:

valve control means for closing the valve in response to a valve closing signal; and

a remote control for sending said valve closing signal to said valve control

means.

61. The apparatus of claim 60 wherein:

said valve control means is also adapted for opening the valve in response to a valve opening signal.

62. The apparatus of claim 61 wherein said valve control means comprises a valve pneumatic controller connectable to an air source on the vehicle and responsive to said valve opening and closing signals.

63. The apparatus of claim 62 wherein:

said valve control means further comprises:

a valve pressure switch in pneumatic communication with said valve pneumatic controller; and

a valve indicator light connected to said valve pressure switch such that said valve indicator light is illuminated when said valve pressure switch senses air pressure communicated to said valve pneumatic controller.

64. The apparatus of claim 60 further comprising:

power take-off control means mounted on the vehicle for engaging the power take-off in response to a power take-off engaging signal and disengaging the power take-off in response to a power take-off disengaging signal.

65. The apparatus of claim 64 wherein said remote control is adapted for transmitting said power take-off disengaging signal and said power take-off engaging signal.

66. The apparatus of claim 65 wherein:

said power take-off controller comprises a manual switch having power take-off engaging and disengaging positions; and

said remote control is adapted for transmitting said power take-off disengaging signal when said switch is in said power take-off engaging position.

67. The apparatus of claim 60 wherein said remote control is wireless.

68. The apparatus of claim 60 further comprising an emergency shutdown for sending said valve closing signal and shutting off power to the pump.

69. The apparatus of claim 60 further comprising:

ignition control means for disengaging an ignition of the engine from a power source on the vehicle in response to an engine shutdown signal; and

wherein, said remote control is adapted for transmitting said engine shutdown signal to said ignition control means.

70. A control apparatus for use on a liquid delivery vehicle of a type having a liquid tank, a flow valve in communication with the liquid tank, a pump in communication with the flow valve, a power take-off connected to the pump for providing power thereto from the engine and an engine throttle on the engine, said apparatus comprising:

throttle control means for opening an engine throttle of the vehicle in response to a throttle opening signal and closing the throttle in response to a throttle closing position; and

a remote control for transmitting the throttle opening and closing signals.

71. The apparatus of claim 69 wherein said throttle control means comprises a throttle controller connectable to an electrical air source of a vehicle and responsive to the throttle opening and closing signals.

72. The apparatus of claim 70 wherein:

said throttle control means further comprises:

a throttle switch having a throttle opening and closing position;

wherein, said remote control is adapted for transmitting said throttle opening and closing signals to said throttle controller when said throttle switch is in said throttle closing position.

73. The apparatus of claim 69 further comprising:

clutch control means mounted on the vehicle for engaging a clutch of the vehicle in response to a clutch engaging signal and disengaging the clutch in response to a clutch disengaging signal; and

wherein, said remote control is adapted for sending said clutch engaging and disengaging signals to said clutch control means.

74. The apparatus of claim 72 wherein said clutch control means comprises a clutch

pneumatic controller connectable to an air source on the vehicle and responsive to said clutch engaging and disengaging signals.

75. The apparatus of claim 73 wherein:

said clutch control means further comprises:

a clutch pressure switch in pneumatic communication with said clutch pneumatic controller; and

a clutch indicator light connected to said clutch pressure switch such that said clutch indicator light is illuminated when said clutch pressure switch senses air pressure applied to said clutch pneumatic controller.

76. The apparatus of claim 69 wherein said remote control is wireless.

77. The apparatus of claim 69 further comprising an emergency shutoff for closing the valve, shutting off power to the pump and closing the throttle.

78. A control apparatus for use on a liquid delivery vehicle of the type having a liquid tank, a flow valve in communication with the liquid tank, a pump in communication with the flow valve, a transmission connected to the engine, a power take-off on the transmission and connected to the pump for providing power thereto, said apparatus comprising:

valve control means mounted on the vehicle for closing the valve in response to a valve closing signal;

power take-off control means mounted on the vehicle for disengaging the power take-off in response to a power take-off disengaging signal; and

a remote control for sending said valve closing signal and said power take-off disengaging signal.

79. The apparatus of claim 77 further comprising:

emergency shutdown means for substantially simultaneously shutting off the engine of the vehicle, closing the flow valve and disengaging the power take-off in response to a shutdown signal; and

wherein said remote control is adapted for transmitting said shutdown signal.

80. The apparatus of claim 78 wherein said power shutdown signal comprises an engine stop signal, said valve closing signal and said power take-off disengaging signal.

81. The apparatus of claim 77 wherein:

said transmission is a manual transmission comprising a clutch; and

further comprising clutch control means mounted on the vehicle for disengaging the clutch in response to a clutch disengaging signal; and

wherein, said remote control is adapted for sending said clutch disengaging signal.

82. The apparatus of claim 77 wherein:

said transmission is an automatic transmission;



said power take-off control means is characterized by a transmission controller connected to said automatic transmission; and

said power take-off disengaging signal comprises a transmission disengaging signal.

83. The apparatus of claim 81 wherein said transmission controller comprises a solenoid.

84. The apparatus of claim 77 wherein said remote control is wireless.

85. A control apparatus for use on a delivery vehicle of a type having a liquid tank, a flow valve in communication with the liquid tank, a pump in communication with the flow valve, a power take-off connected to the pump and connectable to an engine of the vehicle for providing power to the pump, said apparatus comprising:

an ignition controller for disengaging an ignition of the engine from a power source on the vehicle in response to an engine shutdown signal; and

a remote control for transmitting said engine shutdown signal to said ignition controller.

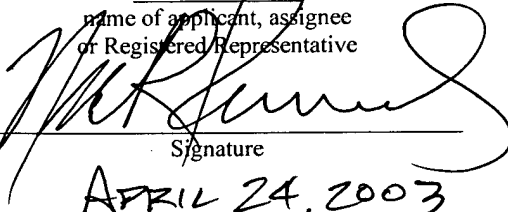
86. The apparatus of claim 85 further comprising:

a valve controller for closing the flow valve in response to a valve closing signal; and

wherein, said remote control is adapted for transmitting said valve closing signal to said valve controller.

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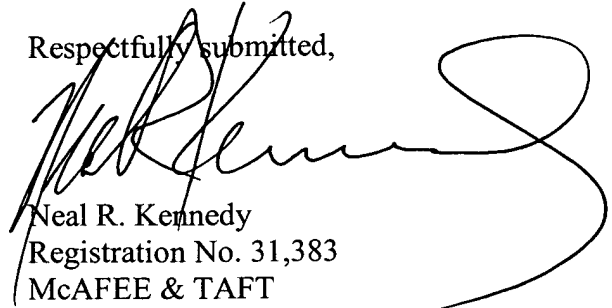
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